

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENTS WITH  
FOREIGN POSTAL OPERATORS  
HONGKONG POST – UNITED STATES POSTAL SERVICE  
BILATERAL AGREEMENT (MC2010-34)  
NEGOTIATED SERVICE AGREEMENT

CP2014-21

**NOTICE OF UNITED STATES POSTAL SERVICE OF FILING  
FUNCTIONALLY EQUIVALENT INBOUND COMPETITIVE MULTI-SERVICE  
AGREEMENT WITH A FOREIGN POSTAL OPERATOR**  
(December 26, 2013)

In accordance with 39 C.F.R. § 3015.5 and Order No. 546,<sup>1</sup> the United States Postal Service (Postal Service) hereby gives notice that the Postal Service has entered into an additional Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator. This notice concerns the inbound portion of a bilateral agreement with Hongkong Post that the Postal Service seeks to include within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (MC2010-34) product.

Prices and classifications for competitive products not of general applicability for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, issued August 9, 2010 (Governors' Decision No. 10-3).<sup>2</sup> In addition, the Postal Regulatory Commission

<sup>1</sup> PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

<sup>2</sup> A redacted copy of the Governors' Decision No. 10-3 was filed on August 13, 2010, and is filed as Attachment 3 of this Notice. An unredacted copy of this Governors' Decision was filed under seal on the

(Commission) previously determined in Order No. 1580 that the predecessor agreement with Hongkong Post that was the subject of Docket No. CP2013-22 should be included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.<sup>3</sup> That agreement will expire on its own terms on February 28, 2014.<sup>4</sup> The Commission is familiar with the negotiation cycle and regulatory process associated with this bilateral relationship. The current version of the agreement is substantively similar to the previous agreement reviewed by the Commission in Order No. 1580. The notable differences between the current agreement and the predecessor agreement are described below.

Using the predecessor Hongkong Post Agreement as the baseline for comparison of agreements for the purpose of determining functional equivalence is consistent with the Postal Service's proposal that was submitted in its Motion for Partial Reconsideration of Order 1864 in Docket No. R2013-9, which is hereby incorporated by reference.<sup>5</sup> As explained above, the predecessor agreement was found by the Commission to be appropriately classified in this product grouping because it met all of the applicable statutory and regulatory requirements. Accordingly, the Postal Service requests that the Commission include the Hongkong Post 2014-2015 Agreement that is

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same day with Request of United States Postal Service to Add Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the Competitive Product List, and Notice of Filing (Under Seal) of Enabling Governors' Decision and Negotiated Service Agreement, Docket Nos. MC2010-34 and CP2010-95, August 13, 2010. That notice may be accessed at the following link: [http://prc.gov/Docs/69/69690/MC2010-34\\_CP2010-95%20Request\\_Notice.pdf](http://prc.gov/Docs/69/69690/MC2010-34_CP2010-95%20Request_Notice.pdf).

<sup>3</sup> Order No. 1580, Order Approving an Additional Inbound Competitive Multi-Service Agreement With Foreign Postal Operators Negotiated Service Agreement (with Hongkong Post), Docket No. CP2013-22 (December 17, 2012).

<sup>4</sup> Order No. 1912, Order Granting Motion for Temporary Relief, Docket No. CP2013-22 (December 18, 2013) (authorizing an extension of the agreement until February 18, 2014); *see also* Order No. 1874, Order Approving Amendment to Existing Agreement, Docket No. CP2013-22 (November 8, 2013) (approving an amendment to the agreement that extended the agreement until January 31, 2014).

<sup>5</sup> Motion for Partial Reconsideration of Order No. 1864, Docket No. R2013-9, November 6, 2013.

attached to this notice within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.

The Hongkong Post 2014-2015 Agreement and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission, and a redacted copy of the agreement is filed as Attachment 1. A certified statement concerning the Hongkong Post 2014-2015 Agreement that is required by 39 C.F.R. § 3015.5(c)(2) is included with this filing as Attachment 2, and an Application for Non-Public Treatment is included as Attachment 4. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

***Identification of the Additional Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator***

The Postal Service believes that, like the predecessor agreement, the Hongkong Post 2014-2015 Agreement fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors' Decision No. 10-3. The competitive services offered to Hongkong Post in the predecessor agreement included rates for inbound Air CP. The Hongkong Post 2014-2015 Agreement includes the same competitive services. The parties intend for the effective date of the rates in the agreement to be March 1, 2014. The rates included in the agreement shall remain in effect for one year after the effective date of this agreement unless terminated sooner.

In this docket, as in Docket No. CP2013-22 concerning the predecessor agreement, the Postal Service is presenting only an agreement with Hongkong Post to deliver inbound Air CP in the United States. The rates paid by the Postal Service to Hongkong Post for outbound delivery of the Postal Service's competitive products in

Hong Kong have not been presented to the Commission. Those rates represent supplier costs to the Postal Service, which are built into the prices that the Postal Service charges its shipping customers for outbound competitive products to be delivered in Hong Kong. An agreement concerning outbound competitive services with Hongkong Post would no more need to be classified as a product or otherwise subjected to prior Commission review than would an agreement by the Postal Service to purchase trucking services from highway contractors or to purchase air transportation from air carriers.

***Application for Non-public Treatment***

The Postal Service maintains that the redacted portions of the contract and related financial information should remain confidential. Attachment 4 to this Notice is the Postal Service's application for non-public treatment of materials filed under seal in this docket. A full discussion of the required elements of the application appears in Attachment 4.

***Functional Equivalency of Inbound Competitive Multi-Service Agreements with Foreign Postal Operators***

As explained above, the Postal Service is using the predecessor Hongkong Post Agreement as the baseline for the purpose of determining the functional equivalence of the Hongkong Post 2014-2015 agreement with other agreements previously filed and included in the product grouping for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators.

The inbound portion of the Hongkong Post 2014-2015 Agreement is substantially similar to the inbound portion of the predecessor agreement between the same two parties in terms of the products being offered under the agreement and the agreement's

cost characteristics. Like the predecessor agreement, the Hongkong Post 2014-2015 Agreement also fits within the parameters outlined by Governors' Decision No. 10-3, which establishes the rates for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. There are, however, differences between the inbound competitive rates portion of the Hongkong Post 2014-2015 Agreement and the predecessor. These differences include the following.

- The years for the references to the Annual Compliance Report in Article 13 have been updated.
- The Postal Service contact information in Article 15 has been updated.
- The references to previous agreements in Article 21 have been updated.
- The Effective Date has been updated in Article 22.
- The representative executing the agreement on behalf of Hongkong Post has been updated.
- The rates in Annex 1 and accompanying notes have been revised.

Because the Hongkong Post 2014-2015 Agreement and the predecessor agreement incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same, for the two agreements. The Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the agreements. Nothing detracts from the conclusion that these agreements are “functionally equivalent in all pertinent respects.”<sup>6</sup>

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<sup>6</sup> PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket No. CP2008-8, June 27, 2008, at 8.

**Conclusion**

For the reasons discussed, and as demonstrated by the financial data filed under seal, the Postal Service has established that the Hongkong Post 2014-2015 Agreement is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to the predecessor agreement which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (MC2010-34) product. Accordingly, the Hongkong Post 2014-2015 Agreement should be added to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (MC2010-34) product.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
By its attorneys:

Anthony F. Alverno  
Chief Counsel  
Global Business and Service Development  
Corporate and Business Law Section

Caroline R. Brownlie  
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Washington, D.C. 20260-1137  
(202) 268-7820; Fax -5628  
December 26, 2013

## **HONGKONG POST – UNITED STATES POSTAL SERVICE BILATERAL AGREEMENT**

This Agreement ("Agreement") is between the United States Postal Service ("USPS"), an independent establishment of the Executive Branch of the Government of the United States with offices at 475 L'Enfant Plaza, SW, Washington, DC 20260, and Hongkong Post ("Hongkong Post"), a government branch of the Hong Kong Special Administrative Region of People's Republic of China, and having a place of business at 4/F Hongkong Post Headquarters 2 Connaught Place, Central, Hong Kong. The USPS and Hongkong Post may be referred to individually as a "Party" and together as the "Parties."

### **INTRODUCTION**

WHEREAS, the Parties desire to enter into a non-exclusive relationship whereby the Parties will provide each other certain products and/or services pursuant to the terms and conditions contained herein;

WHEREAS, the Parties acknowledge and understand that the commencement of performance under this Agreement is subject to the approval of and/or non-objection by various entities with oversight responsibilities, which may include but not be limited to the USPS management's executive committee, the USPS Governors, and/or the U.S. Postal Regulatory Commission. Accordingly, Hongkong Post acknowledges and understands that the ability of the USPS to perform under this Agreement may not occur, and in this respect the provisions of Article 2 and 3 shall apply;

WHEREAS, in light of the aforementioned acknowledgements, the Parties desire to be bound by the terms of this Agreement as well as the terms of Article 3 of this Agreement entitled "Conditions Precedent";

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

### **Article 1: Purpose of the Agreement**

The purposes of this Agreement are the following:

1. To foster the maintenance and further development of a mutually beneficial relationship on behalf of the Parties' respective customers; and
2. To set out the rates, principles and general terms and conditions that shall apply to the exchange of certain international products and services between the Parties, as further detailed and set forth in the Annexes to this Agreement.

### **Article 2: Oversight and Effective Date**

The terms and pricing set forth under this Agreement require the approval from various entities that have oversight responsibilities for the USPS as set out in Article 3 below. Upon execution of this Agreement, the USPS shall seek such approval. This Agreement shall come into effect upon all such approvals having been obtained by USPS and notification to Hongkong Post by the USPS that all such approvals have been obtained, and the date of notification shall be "the Effective Date," unless an alternative date is proposed in the USPS's notification and agreed to by Hongkong Post in a return communication, in which case that alternative date shall be the Effective Date.

### **Article 3: Conditions Precedent**

The Parties acknowledge and understand that all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by (hereinafter "Conditions Precedent") one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include but are not limited to: approvals or, if applicable, non-objection, from USPS

management's executive committee, the Governors of the USPS, and the U.S. Postal Regulatory Commission. The Parties acknowledge that the Agreement might not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS or Hongkong Post and no benefit or rights granted through this Agreement shall inure to either Party unless and until the Effective Date occurs and upon such occurrence the Conditions Precedent shall have been fulfilled.

#### **Article 4: Limitation on Liability and Costs**

In the event that the Conditions Precedent are not fulfilled, the USPS and Hongkong Post shall have no liability, which shall include no obligation to pay costs associated with any action taken by Hongkong Post prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or the failure of any Condition Precedent, neither Party shall be held liable for any damages including, without limitation, the following: actual damages; special damages; indirect damages; incidental damages; punitive damages; consequential damages; or any other damages, which shall include but not be limited to damages for loss of business profits; business interruption; any other loss; and/or any cost incurred by either Party attributable to such non-approval such as attorney's fees.

#### **Article 5: Price Changes; No Effect on Service Terms**

For each of the services with specific terms and conditions set forth in an attachment to this Agreement, any adjustments to the rates for the services shall be subject to the terms and conditions set forth in the Annexes of this Agreement.

#### **Article 6: Monetary Transactions**

1. Each Party will bear the costs and retain the revenues for any work performed by itself and by agents or contractors on its behalf, unless the Parties agree to other arrangements to allocate costs or revenues and those arrangements are incorporated in an Amendment to this Agreement. Any such Amendment shall be governed by Article 18 below.
2. All taxes and duties are the sole responsibility of the Party to whom they are duly assessed and shall not be charged to any other Party in any form unless the Parties otherwise provide in an Amendment to this Agreement. Any such Amendment shall be governed by Article 18 below.

#### **Article 7: Customs Inspection**

USPS bears no responsibility for the disposition of items in the custody of U.S. Customs & Border Protection. Further, Hongkong Post understands that all contents of any item, including items that are treated as sealed mail under USPS regulations, are subject to inbound search and inspection by U.S. Customs & Border Protection, regardless of when the USPS elects to conduct verification and acceptance of any inbound items.

#### **Article 8: Termination**

1. Either Party may terminate this Agreement without cause upon 30 days advance written notice to be served on the other Party, with such termination effective as of the end of the calendar month in which the 30-day notice period expires. The right to terminate the Agreement for good cause remains unaffected.
2. In the event of termination of the Agreement under this Article, the Parties shall be liable to make final settlement of all amounts owing as of the effective date of the termination. Each Party shall bear its own costs in the event of termination. All further rights and remedies shall remain unaffected.

3. In the event of termination, and as of the effective date of termination, the Parties shall revert to the default rates applicable under the Universal Postal Union Convention effective at the time of such termination, and neither Party shall be liable to the other for any damages including, without limitation, actual, special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason incurred as a result of the change of rates after termination.

#### **Article 9: Dispute Resolution**

1. The Parties intend to resolve all controversies under this Agreement informally through correspondence, oral communications, and informal meetings.
2. If the method described in the above paragraph proves insufficient to resolve a controversy, the Parties agree that the signatories to this agreement, or their replacement, shall provide a written description of the controversy to the other Party and a suggested outcome. They will review the information provided and shall attempt in good faith to come to an agreement on the issue through correspondence, oral communications, or informal meetings.
3. If the methods described in the above paragraph prove insufficient to resolve a controversy, the Parties agree to refer that controversy to mediation, which shall consist of an informal, nonbinding conference or conferences between the Parties and the mediator, which shall perform mediation responsibilities in the English language. The mediator will be selected as mutually agreed by the Parties.
4. With the exception of controversies concerning cost or revenue liability, mediation will provide the sole means for addressing controversies related to this Agreement. If mediation does not resolve such a controversy, the parties may exercise their right to terminate.
5. For controversies related to cost or revenue liability, Hongkong Post and the USPS will first refer the matter to mediation as discussed in the above paragraph. If mediation does not resolve such a controversy, an action relating to cost or revenue liability may be instituted and maintained only in the United States District Court for the District of Columbia. The parties each irrevocably submit to the exclusive personal jurisdiction of the United States District Court for the District of Columbia and waive any objection to the laying of venue in that court, to the convenience of that forum, and to that court's personal jurisdiction over the Parties, including any arguments about sovereign immunity.
6. Notwithstanding the provisions of this Article 9, and without prejudice to Article 11, paragraph 1, in the event of conflict or inconsistency between the provisions of this Article 9 and Article 11, paragraph 1, the provisions of Article 11, paragraph 1 shall prevail.

#### **Article 10: Construction**

Except as otherwise provided in this Agreement, this Agreement shall be governed by and construed in accordance with U.S. Federal law. To the extent this Agreement is not covered by the Federal law of the United States, the law of the state of New York shall apply.

#### **Article 11: Indemnification and Liability**

1. The Parties acknowledge that aspects of liability or indemnification (including, but not limited to air parcels) in favor of third Parties not expressly governed by this Agreement or its regulations are subject to the appropriate provisions of the Acts of the Universal Postal Union and any reservations the Parties have taken to those instruments.
2. In the event that an entity not party to this Agreement asserts claims against Hongkong Post or USPS that are attributable to the actions of the other Party to this Agreement and are not subject

to the provisions of the Acts of the Universal Postal Union, the latter Party shall indemnify the defending Party for, and hold the defending Party harmless from, any losses, damages or liabilities suffered by the defending Party as a result. In that instance, the indemnifying Party shall also reimburse the defending Party for all reasonable expenses incurred in connection with investigating, preparing for, or defending any such claim, whether in an administrative, regulatory or judicial proceeding, and whether or not the indemnified Party is named in the proceeding.

3. Neither Party to this Agreement shall be liable to the other Party nor will they indemnify the other Party for any loss or damage including special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason, except for the following:
  - a. liability and indemnification as described in Article 11, paragraph 1,
  - b. final settlement under Article 8, or
  - c. any actual damage or loss suffered by a Party as a result of a breach of this Agreement by the other Party.
4. Nothing in this Agreement shall be construed as an acknowledgment or concession regarding the validity of any claim or the entitlement of any Party to any amount of damages.

#### **Article 12: Language**

The official version of this Agreement, including all supporting documentation and correspondence, shall be in English. The English language shall be the controlling language for the purpose of interpreting this Agreement, and all correspondence between the Parties pertaining to this Agreement shall be in the English language. In the event of inconsistency between any terms of this Agreement, including its supporting documentation and correspondence, and any translation into another language, the English language meaning shall control.

#### **Article 13: Confidentiality Requirements**

1. The Parties consider the rate information included in this Agreement to be commercially sensitive information and agree that it should not be disclosed to third parties except as required by law. Hongkong Post will treat as confidential and not disclose to third parties, absent express written consent by the USPS, any information related to this Agreement that is treated as non-public by the U.S. Postal Regulatory Commission. Except as required by U.S. law, USPS will treat as confidential and not disclose to third parties, absent express written consent by Hongkong Post, any information related to this Agreement and proprietary to Hongkong Post that is treated as non-public by the U.S. Postal Regulatory Commission.
2. Hongkong Post acknowledges that United States law may require that this Agreement and supporting documentation be filed with the U.S. Postal Regulatory Commission (Commission) in a docketed proceeding. In addition, Hongkong Post acknowledges that United States law may require that this Agreement be filed with the U.S. Department of State. Hongkong Post authorizes the USPS to determine the scope of information that must be made publicly available under the Commission's rules. Hongkong Post further understands that any unredacted portion of this Agreement or supporting documentation may be posted on the Commission's public website, [www.prc.gov](http://www.prc.gov). In addition, the USPS may file information in connection with this Agreement (including revenue, cost, or volume data) in other Commission dockets, including Commission docket numbers ACR2014 and ACR2015. Hongkong Post has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22, on the Commission's website: [www.prc.gov/Docs/63/63467/Order225.pdf](http://www.prc.gov/Docs/63/63467/Order225.pdf). At Hongkong Post's request, the U.S. Postal Service will notify Hongkong Post of the docket number of the Commission proceeding, if any, used in connection with this agreement.

**Article 14: Severability**

If any of the provisions of this Agreement shall be held void or unenforceable, the other provisions shall survive and remain in full force and effect, subject only to either Party's unilateral right to terminate the Agreement.

**Article 15: Notices**

Any notice or other document to be given under this Agreement will be in writing and addressed as set out below. Notices may be delivered by hand, email, or Express Mail.

To the USPS:

Teresa Yeager  
GM, Business Development, Asia Pacific  
United States Postal Service  
475 L'Enfant Plaza, SW, Room 2P826  
Washington, DC 20260-0906  
1-202-268-2925  
teresa.y.yeager@usps.gov

To Hongkong Post:

Sammy Cheng  
Senior Manager (International Letters)  
External Affairs Division  
Hongkong Post Headquarters  
Room 2M06A  
2 Connaught Place, Central  
Hong Kong  
Tel: 852- 2921 6026  
Fax: 852- 2536 4247  
email: Sammy\_cw\_cheng@hkpo.gov.hk

**Article 16: Force Majeure**

Neither party shall be liable for its failure to perform under the terms of this Agreement due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid, court orders, whether valid or invalid, inability to obtain material, equipment, or transportation, and any other similar or different contingency.

**Article 17: Legal Status of this Agreement**

This Agreement constitutes a legally binding agreement on the part of each signatory hereto and does not bind the Parties' respective governments. The Parties acknowledge that this Agreement sets out the terms and conditions of a negotiated contractual arrangement between the Parties and is not an agreement entered into or subject to international law. This Agreement does not involve the creation of a wholly-owned subsidiary of any Party or a joint venture company or partnership funded in any ratio by the Parties. The Parties do not intend that any agency or partnership relationship be created between any of them by this Agreement.

**Article 18: Amendment**

This Agreement may be amended or extended only by mutual written agreement signed by authorized representatives of Hongkong Post and USPS. Neither a Party's acquiescence in any performance at

variance to this Agreement nor a Party's failure to exercise any right or enforce any obligation shall be deemed an amendment to this Agreement. The Amendment may be contingent upon any and all necessary approvals by USPS management, the USPS Governors, the USPS Board of Governors, and/or the U.S. Postal Regulatory Commission. If such approvals are required, the Amendment will not become effective until such time as all necessary approvals are obtained.

#### **Article 19: Assignment**

This Agreement may not be assigned in whole or in part by any Party without the prior written consent of the other parties.

#### **Article 20: Applicability of Other Laws**

1. The Parties acknowledge that this Agreement does not involve the USPS's acquisition of property or services and is not subject to the Contract Disputes Act (41 U.S.C. §§ 601 et seq.).
2. The Parties recognize that performance under this Agreement may be subject to laws enacted or enforced by governmental entities and is contingent on each Party obtaining all consents, authorizations, orders, or approvals required under applicable law of policy to effectuate the Agreement.

#### **Article 21: Entire Agreement**

1. Except as otherwise provided in this Agreement, this Agreement, including all Annexes to this Agreement, shall constitute the entire agreement between the Parties concerning the exchange of international mail described herein.
2. Neither Hongkong Post nor the USPS is released from any remaining obligations arising under the Hongkong Post – United States Postal Service Bilateral Agreement executed by Hongkong Post on November 13, 2012, and by USPS on November 14, 2012 (Hongkong Post – USPS 2012-2013 Bilateral Agreement).
3. With the exception of the Agreement mentioned in Paragraph 2 of this Article, or as otherwise indicated in this agreement, any prior agreement, understanding, or representation of any kind pertaining to the subject matter of this Agreement and preceding the date of this Agreement shall not be binding upon either Party.
4. The Parties acknowledge that the provisions of the Universal Postal Convention and applicable regulations apply except to the extent inconsistent with this Agreement.

#### **Article 22: Term**

1. The Parties intend that the Effective Date of the settlement rates for the products set forth in Annex 1 of this Agreement should be March 1, 2014.
2. The USPS will notify Hongkong Post of the Effective Date of the Agreement within thirty (30) days after receiving the approval of the entities that have oversight responsibilities for the USPS. USPS shall have no obligation to notify Hongkong Post of the status of the approval process or of potential fulfillment of the approval process. The Agreement will remain in effect for one year after the Effective Date unless terminated sooner pursuant to Article 8. Prior to the expiration of this period, the Agreement shall be re-evaluated by both Parties on whether to extend the agreement for another year or otherwise modify the Agreement.

**Article 23: Intellectual Property, Co-Branding, and Licensing**

The Parties acknowledge that in the service of improving existing international products or developing new international products under this Agreement that such products may be enhanced through the use of co-branding or the use of each Party's trademarks, logos or intellectual property. In such instances, the Parties acknowledge and agree that any use shall be subject to separate written agreements. The Parties acknowledge and agree that neither Party shall use the other Party's trademarks, logos or intellectual property until such time that a license for each specific such use has been executed by the Parties and all laws and regulations required for such license's effectiveness have been perfected, which shall include but not be limited to any recordation requirements.

**Article 24: Survival**

The provisions of Articles 4, 8, 9, 10, 11, 12, 13, 14, 15, 21, 22, and 23 shall survive the conclusion or termination of this agreement, as well as any other terms insofar as they apply to the Parties' continuing obligations to one another under the articles listed above.

IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of this Agreement.

Hongkong Post



Patrick Lin  
Director (External Affairs)

23.12.2013

Date

United States Postal Service



Giselle Valera  
Vice President and Managing Director, Global Business

23-12-2013

Date

# Annex 1: Settlement Rates

## **Rates**

The rates below shall be in effect for the term of this Agreement, as set forth in Article 22. Changes in rates during the term of this Agreement will be negotiated and agreed to in accordance with Article 18.

The provisions of Articles 3 and 4 shall apply to the USPS's ability to give effect to any agreed-upon rates, such that the agreement of the USPS to any change in rates is accordingly contingent upon any and all necessary approvals by Postal Service Management, the USPS Governors, the USPS Board of Governors, and/or the U.S. Postal Regulatory Commission. The approval process may extend well beyond the originally intended effective date. If such approvals are required, the rates cannot become effective until such time as all necessary approvals are obtained.

Settlement rates listed in the tables included below are product stream rates per piece and per kilogram stated in Special Drawing Rights (SDRs) unless noted otherwise. These rates include applicable Air Conveyance charges. Any changes to current specifications (i.e., sortation and preparation) must be agreed to in writing by both parties as provided in Article 18 of this Agreement.

### **HONG KONG TO USA**

Stream /1	Service Description	Contract Period (in SDR) /2	
		PER PIECE	PER KG
A, CN/CV, BG	AIR PARCELS		
A, UD, BG	SMALL PACKET WITH DELIVERY SCANNING (AVERAGE QUARTERLY WEIGHT BELOW 300 GRAMS)		
A, UD, BG	SMALL PACKET WITH DELIVERY SCANNING (AVERAGE QUARTERLY WEIGHT EQUAL TO OR ABOVE 300 GRAMS)		

### **USA TO HONG KONG**

Stream /1	Service Description	Contract Period (in SDR) /2	
		PER PIECE	PER KG
A, CN, CN/BG	AIR PARCELS		

### Notes concerning Table of Settlement Rates above

#### **Specifications of Letter Post Product Categories and Formats**

The rates for the stream categories above shall be based upon the following format and product definitions:

Small Packets with Delivery Scanning – Hong Kong to USA  
Refer to Annexes 2 and 3 of this Agreement.

#### **Specifications of Parcel Post Product Categories and Formats**

##### **Parcels**

The admitted maximum weight limit for parcels is 70 lbs.

The admitted maximum size for parcels is 60 inches for any one dimension or 108 inches for the sum of the length and the greatest circumference measured in a direction other than that of length.

## **Annex 2 – Hong Kong to United States Small Packets with Delivery Scanning**

### ***Package Specific Preparation Requirements***

1. **Package Dimensions and Weight.** Each package shipped under this agreement must conform to the size and weight limitations specified in the UPU Letter Post Manual or as bilaterally agreed. Specifically, each package shall not exceed 2 kilograms in weight or limits of size specified in Universal Postal Union Article RL 122.
2. **Package Contents.** Packages shall conform to the importation restrictions of the United States as set forth in the *Mailing Standards of the United States Postal Service*, International Mail Manual, section 710 ("Treatment of Inbound Mail"), which can be accessed online at [http://pe.usps.com/text/imm/immc7\\_001.htm](http://pe.usps.com/text/imm/immc7_001.htm); and in accordance with the United States country listing in the Universal Postal Union's List of Prohibited Items, which can be accessed at the Universal Postal Union website at <http://www.upu.int/en/activities/customs/list-of-prohibited-articles.html>. Packages should also conform to USPS's regulations on Mailable Dangerous Goods as set forth in IMM section 135, which can be accessed online at [http://pe.usps.com/text/imm/immc1\\_013.htm](http://pe.usps.com/text/imm/immc1_013.htm). USPS shall not be responsible for the contents or customs status of any packages imported under this Agreement. For packages seized or disposed of by U.S. Customs and Border Protection and not released, the sending post will not be charged postage for those packages. For packages detained but eventually released, applicable postage will apply. The sending post agrees to communicate these requirements to shippers as a condition of shipment.
3. **Package Labeling.** The bilaterally agreed upon, co-designed label will be displayed on the outside of each small packet with delivery scanning. Customers in Hong Kong will use the HKP-certified software to print labels which will include a barcode that meets the specifications set forth in Universal Postal Union Letter Post regulations. The barcode shall utilize the LK prefix of the Universal Postal Union S10 barcode construct. The sample label is presented in Annex 3. In addition, each item will display a completed and accurate customs declaration.

### ***Receptacle Preparation Requirements***

1. **Separation from other products.** The Small Packet with Delivery Scanning product that is described in this Agreement will be sorted in receptacles separate from other mail pieces. Other international products, including, but not limited to, other Letter Post products (such as Registered Mail), Express Mail Service (EMS), Air Parcels (Air CP), and direct entry packages, may not be commingled in receptacles containing Small Packet with Delivery Scanning items.
2. **Receptacle Identification.** Each receptacle will contain a 29-character UPU barcode containing the bilaterally agreed-upon mail subclass code.
3. **Receptacle Routing.** To expedite the processing and delivery of these packages, the sending post may present receptacles to corresponding Offices of Exchange (OEs) per the routings outlined in Annex 5.

### ***Dispatch Preparation Requirements***

1. **Separation from other products.** The Small Packet with Delivery Scanning product that is described in this Agreement will be dispatched separately from other mail pieces. Other international products, including but, not limited to, other Letter Post products, Express Mail Service (EMS), Air Parcels (Air CP), and direct entry packages, may not be commingled in dispatches containing Small Packet with Delivery Scanning items.

2. **Dispatch Identification.** Each dispatch will contain the bilaterally agreed-upon mail subclass code and unique dispatch numbers, which shall not repeat within any settlement period.
3. **Dispatch Manifesting.** The Parties agree to provide PREDES messaging for each dispatch, including the number of receptacles, total weight and number of pieces contained in each receptacle. The parties will strive to provide accurate PREDES messaging of 100% of dispatched volume and transmit the PREDES in timely manner. Where deficiencies exist, the two sides will agree to exchange data and correct deficiencies promptly.

#### ***Financial Requirements***

USPS and Hongkong Post shall settle Small Packet with Delivery Scanning volumes, and any other Letter Post volumes in accordance with current Letter Post settlement procedures. However, Small Packet with Delivery Scanning volumes will be identified and segregated from other Letter Post volume through the assignment of the "UD" mail subclass. At the end of the settlement period, the corresponding rate, as determined in this agreement, shall be applied to the corresponding Letter Post volume, as identified by the mail subclass. Hongkong Post agrees to generate unique dispatch numbers throughout the course of the settlement period.

#### ***Return Service, Customer Inquiries and Compensation***

1. **Return Service.** Return service for undeliverable, refused, or missent packages will be provided consistent with the current procedures for letter-post small packets.
2. **Customer Inquiries.** USPS will not accommodate customer inquiries made by customers in either Hong Kong or the United States through retail units, customer service hotlines, or other channels for Small Packets with Delivery Scanning.
3. **Compensation.** USPS does not offer indemnity or insurance for Small Packages with Delivery Scanning. Accordingly, unless the Parties agree otherwise in a separate written agreement, USPS shall have no such liability.

#### ***Service Standards***

Small Packets with Delivery Scanning under this Agreement carry no day- or time-specific guarantee. Applicable domestic service standards apply once the packages are cleared through U.S. Customs & Border Protection and entered into the U.S. domestic mailstream.

**Annex 3 Co-Designed Label Samples**

Below is a sample label for Small Packets with Delivery Scanning.

			<div>Airmail Postage Paid Hong Kong Post</div>
			
From:			
FOREIGN SENDER STREET ADDRESS CITY COUNTRY POSTAL CODE			
<small>Customs information available on attached CN22. USPS Personnel Scan barcode below for delivery event information</small>		11111	
TO:	US RECIPIENT NAME STREET ADDRESS SUITE/ APT NUMBER WASHINGTON DC 11111-1111		
USPS DELIVERY CONFIRMATION			
			
XXXXXXXXXXXXX			

**Annex 4 – Detailed Item Content Restrictions**

All items mailed under this Agreement must conform to the mailability requirements of the United States Postal Service, as detailed in the International Mail Manual sections 135 and 710; the United States country listing in the Universal Postal Union's List of Prohibited Items; and Domestic Mail Manual section 601. As of the execution date of this Agreement, these materials are available at the following websites, respectively:

[http://pe.usps.gov/text/imm/immc1\\_013.htm](http://pe.usps.gov/text/imm/immc1_013.htm)

[http://pe.usps.com/text/imm/immc7\\_001.htm](http://pe.usps.com/text/imm/immc7_001.htm)

[http://www.upu.int/customs/en/country\\_list\\_en.pdf](http://www.upu.int/customs/en/country_list_en.pdf)

<http://pe.usps.gov/text/dmm300/601.htm>

**Annex 5 – Suggested Office of Exchange Routing Details**

**USPS**

The following table illustrates the appropriate U.S. point of entry based on the first digit of the destination address postal code. A more detailed table based on the first three digits can be provided upon request.

<b>First Digit of Postal Code</b>	<b>Desired U.S. Point of Entry</b>
0	JFK - New York
1	JFK - New York
2	JFK - New York
3	JFK - New York
4	JFK - New York
5	JFK - New York
6	JFK - New York
7	SFO – San Francisco OR LAX – Los Angeles
8	SFO – San Francisco OR LAX – Los Angeles
9	SFO – San Francisco OR LAX – Los Angeles

**Certification of Prices for the Inbound Competitive Multi-Service Agreement with  
Hongkong Post**

I, Virginia Mayes, Manager, Cost Attribution, Finance Department, United States Postal Service, am familiar with the prices for the Inbound Competitive Multi-Service Agreement with Hongkong Post. The prices contained in this agreement were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, issued August 6, 2010 (Governors' Decision No. 10-3)

I hereby certify that the cost coverage for the agreement with Hongkong Post has been appropriately determined and represents the best available information. The prices are in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The prices demonstrate that the agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2013, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from this agreement should be much smaller. The agreement with Hongkong Post should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

  
Virginia Mayes

**"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"**

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE  
ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR INBOUND COMPETITIVE  
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS  
(GOVERNORS' DECISION NO. 10-3)**

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August 6, 2010

**STATEMENT OF EXPLANATION AND JUSTIFICATION**

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices. This decision establishes prices by setting price floor and price ceiling formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. The agreements to which these prices will apply are described in Attachment A.<sup>1</sup> The pricing formulas and management's analysis of the appropriateness of these formulas are specified in Attachment B. We have reviewed that analysis and have concluded that the prices and classification changes are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. Agreements that fall within the terms specified in Attachment A, and whose prices fall within the price ranges established by the price floor and price ceiling formulas specified in Attachment B, are hereby authorized.

The PAEA provides that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. We are satisfied that the prices established according to the formulas listed in Attachment B will enhance the Postal Service's ability to meet the applicable statutory and regulatory requirements. We accept and rely upon the certification in Attachment C that the correct cost inputs for the formulas have been identified. In addition, the price floor formulas should produce prices that allow each product to cover attributable costs and

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<sup>1</sup> Because the Postal Service is creating a new grouping for Inbound Competitive Multi-Service Agreements with Foreign Postal Administrations, entirely new Mail Classification Schedule language is proposed.

**"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"**

**Governors' Decision No. 10-3**

**Page 2**


provide a contribution toward the Postal Service's institutional costs. The prices should thus prevent cross-subsidies from market dominant products. As noted in the certification in Attachment C, entry into agreements pursuant to this Decision should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.

No agreement authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3).

**ORDER**

In accordance with the foregoing Decision of the Governors, the formulas set forth herein, which establish prices for the applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:

A handwritten signature in black ink, appearing to read "Lou Giuliano", is written over a horizontal line.

Louis J. Giuliano  
Chairman

## **Attachment A**

### **Description of Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators**

#### **2614 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators**

##### **2614.1 Description**

- a. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators provide prices for acceptance, transportation within the United States, and delivery of any combination of Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and/or Inbound International Expedited Services (Express Mail Service) tendered by foreign postal operators. These constituent services may include other services that the relevant foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in a similar manner within the United States Postal Service's network. Such agreements may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.
- b. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators may set forth general operating terms and conditions, on-time delivery and scanning service performance targets and standards, specifications for mail product categories and formats, processes for indemnity, and shared transportation arrangements that modify the requirements generally applicable to the services covered by each agreement.
- c. Items tendered under Inbound Competitive Multi-Service Agreements with Foreign Postal Operators items are either sealed or not sealed against inspection, according to the general nature of each underlying service.

##### **2614.2 Size and Weight Limitations**

Size and weight requirements are the requirements for Inbound Air Parcel Post at UPU Rates, Inbound Surface Parcel Post (at UPU Rates), Inbound Direct Entry, and Inbound International Expedited Services (Express Mail Service), respectively, subject to any applicable country-specific modifications.

##### **2614.3 Optional Features**

The Postal Service may offer such optional features as may be mutually agreed with the relevant foreign postal operator.

2614.4

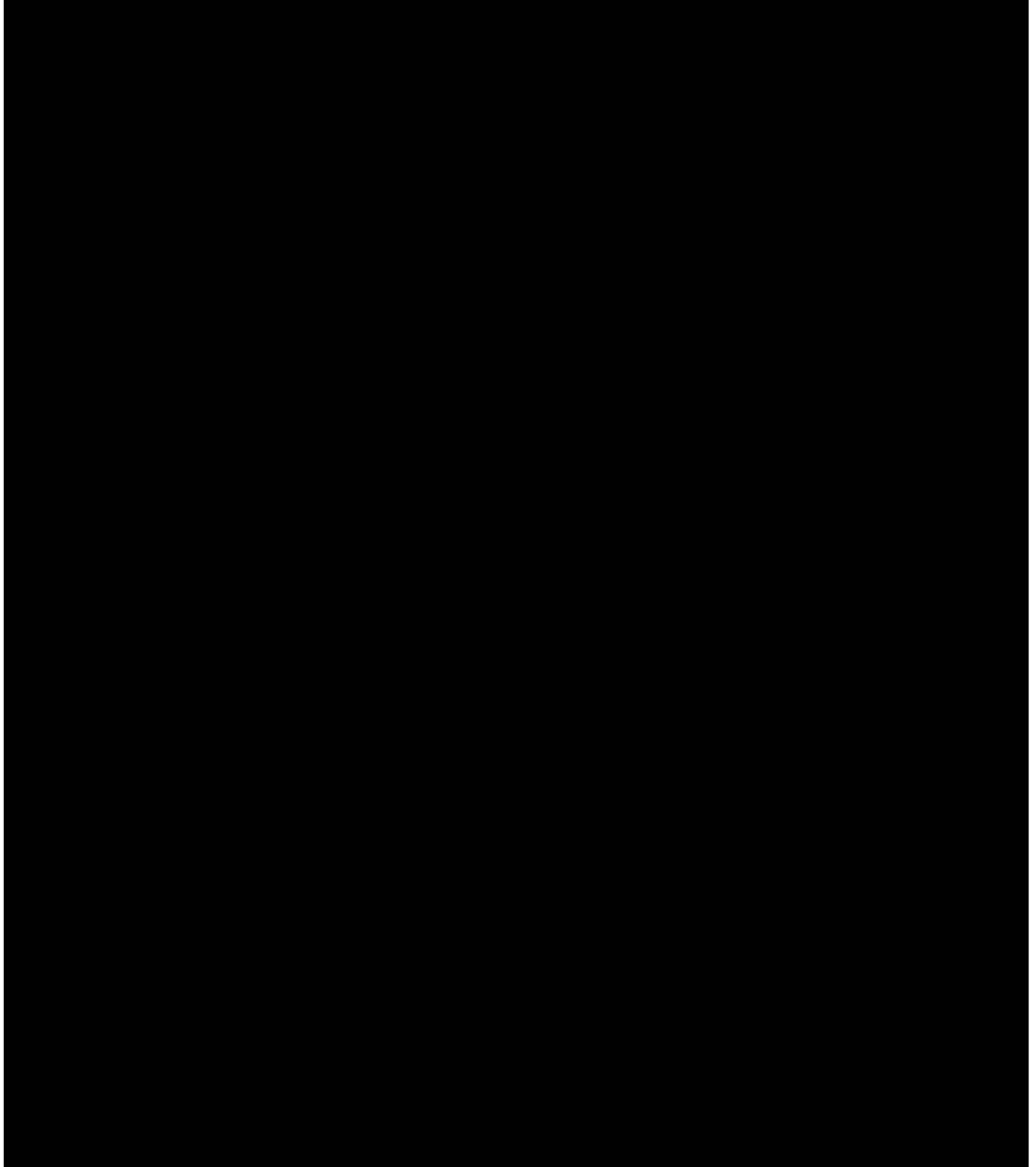
Products Included in Group (Agreements)

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-X, CP2010-X)

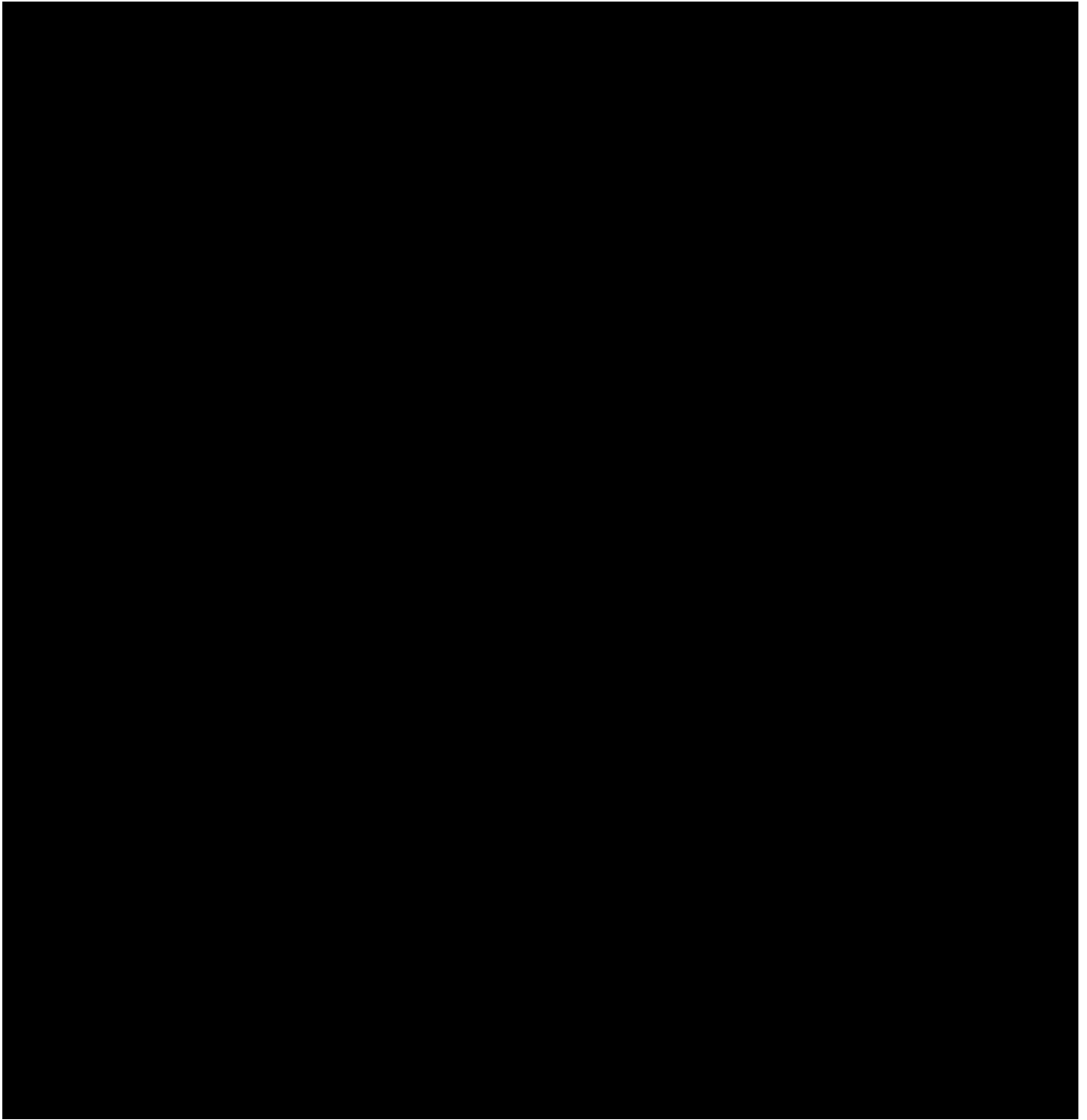
"Restricted and Sensitive Business Information - Do Not Disclose."

## **Attachment B**

### **Formulas for Prices Under Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators**



"Restricted and Sensitive Business Information - Do Not Disclose."



## Attachment C

### **Certification of Prices for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators**

I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the price formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, which are set forth in Attachment B. I hereby certify that these formulas adequately represent all necessary cost elements. If the Postal Service were to enter into agreements and offer services that set prices above the price floors, the Postal Service would be in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The price floor formulas are designed to ensure that each agreement and service should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2009, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from Inbound Competitive Multi-Service Agreements with Foreign Postal Operators should be much smaller. Even if all such agreements are signed with prices at the price floor, they should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.



Joseph Moeller

**CERTIFICATION OF GOVERNORS' VOTE  
IN THE  
GOVERNORS' DECISION NO. 10-3**

I hereby certify that the Governors voted on adopting Governors' Decision No. 10-3, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.

  
\_\_\_\_\_  
Julie S. Moore  
Secretary of the Board of Governors

Date: 8-9-2010

## ATTACHMENT 4

### APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to the bilateral agreement between the Hongkong Post and the United States Postal Service filed in this proceeding. The agreement and supporting documents establishing compliance are being filed separately under seal with the Commission. A redacted copy of the agreement is filed with the Notice as Attachment 1. In addition, a redacted version of the supporting financial documentation is included with this public filing as a separate Excel file.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).<sup>1</sup> Because the portions of the materials that the Postal Service is

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<sup>1</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed

applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

In the case of the instant Agreement, the Postal Service believes that the only third party with a proprietary interest in the materials is the foreign postal operator with whom the contract is made. Through text in the agreement, the Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and the operator's ability to address its confidentiality concerns directly with the Commission. Due to the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices. The Postal Service identifies as an appropriate contact person Ms. Teresa Yeager, General Manager, Business Development, Asia Pacific, Global Business Solutions, Global Business, United States Postal Service. Ms. Yeager's phone number is (202) 268-2925, and her email address is [teresa.y.yeager@usps.gov](mailto:teresa.y.yeager@usps.gov).<sup>2</sup>

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broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

<sup>2</sup> The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

In connection with its Notice filed in this docket, the Postal Service included an agreement and financial workpapers associated with that agreement. These materials were filed under seal, with redacted copies filed publicly, after notice to the affected postal operator. The Postal Service maintains that the redacted portions of the agreement and related financial information should remain confidential.

With regard to the agreement filed in this docket, the redactions withhold the actual prices being offered between the parties under the agreement. The redactions applied to the financial workpapers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b).

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the portions of the agreement that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about negotiated pricing is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Foreign postal operators could use the

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Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

information to their advantage in negotiating the terms of their own agreements with the Postal Service. Competitors could also use the information to assess the offers made by the Postal Service to foreign postal operators or other customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. This latter concern applies to the extent that the prices in the filed agreement cover certain competitive services, which are included in the agreement filed under seal and market dominant services for which competition exists. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial workpapers include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of variables, and contingency rates included to account for market fluctuations and exchange risks. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing, in light of statutory, regulatory, or policy constraints. Thus, competitors would be able to take advantage of the information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant inbound delivery services markets. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the agreement or from the information in the workpapers whether additional margin for net contribution exists under agreement's prices. The settlement charges between the Postal Service and the foreign postal operator constitute costs underlying the postal services offered to each postal operator's customers, and disclosure of this cost basis would upset the balance of Postal Service negotiations with contract customers by allowing them to negotiate, rightly or wrongly, on the basis of the Postal Service's perceived supplier costs.

From this information, each foreign postal operator or customer could also attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the foreign postal operator involved in the agreement at issue in this docket could use the information in the workpapers in an attempt to renegotiate the rates in its instrument by threatening to terminate its current agreement.

Price information in the agreement and financial spreadsheets also consists of sensitive commercial information of the foreign postal operator. Disclosure of such information could be used by competitors of the foreign postal operator to assess the foreign postal operator's underlying costs, and thereby develop a benchmark for the development of a competitive alternative. The foreign postal operator would also be exposed to the same risks as the Postal Service in customer negotiations based on the revelation of their supplier costs.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Harm: Public disclosure of the prices in the Agreement, as well as any negotiated terms, would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: The negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the price and determines that there may be some additional profit margin below the rates provided to either operator. The other postal operator, which was offered rates comparable to those published in the agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered.

Harm: Public disclosure of information in the financial workpapers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing delivery service obtains unredacted versions of the financial workpapers from the Postal Regulatory Commission's website. It analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to comply with business or legal considerations regarding cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers below that threshold and markets its purported ability to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of one or more relevant international delivery markets. Even if the

competing providers do not manage wholly to freeze out the Postal Service, they will significantly cut into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the financial workpapers would be used detrimentally by the foreign postal operator's competitors.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the workpapers to assess the foreign postal operator's underlying costs for the corresponding products. The competitor uses that information as a baseline to negotiate with U.S. companies to develop lower-cost alternatives.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should not be provided access to the non-public materials. This includes the counter-party to the agreement with respect to all materials filed under seal except for the text of the postal operator's agreement, to which that counter-party already has access.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.